

REMARKS

Applicants thank the Examiner for the Office Action of July 8, 2008. This Request for Reconsideration is in full response thereto. Thus, Applicants respectfully request continued examination and allowance of the application.

Claims 18-37 are pending in this application.

Allowable Subject Matter:

Applicants thank the Examiner for the allowing claims 36 and 37 and for the indication of allowable subject matter in claims 19-26 and 29-35.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 18, 27 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,167,708 (Cloarec) in view of Official Notice. Applicants respectfully traverse because Cloarec fails to disclose, teach or suggest a heated temperature probe. As such, the rejection should be withdrawn.

In order to address Cloarec's failure to disclose a heated temperature probe, the Examiner takes Official Notice that it is well known in the art to utilize a heated temperature (sic) for heating a liquid source. Applicant assumes that the Examiner intended to say that it is well known in the art to utilize a heated temperature (sic) for heating a liquid source. Applicant respectfully traverses for two reasons:

- the Examiner has not complied with the substantial evidence standard under the Administrative Procedure Act
- the Examiner has not provided any teaching as to why one of ordinary skill in the art would seek to heat cryogenic liquid with the putatively well known heated temperature probe.

Findings of fact in rejections is governed by the substantial evidence standard under the Administrative Procedure Act. Notice of facts beyond the record taken by the Examiner must be "capable of such instant and unquestionable demonstration as

to defy dispute". *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970) (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). In this case, the Examiner has not complied with the substantial evidence standard or USPTO Official Notice practice because he has not substantiated his claim of the utilization of heated temperature probes for heating a liquid source. Applicant has searched the prior art and failed to uncover a single disclosure of the utilization of a heated temperature probe for heating a liquid. Applicant kindly requests the Examiner to provide documentary evidence to establish that such Official Notice is correct.

Second, even if the Examiner can establish that it is well known in the art to heat a liquid with a heated temperature probe, the Examiner has not pointed to any teaching or provided any technical rationale explaining why one of ordinary skill in the art would have utilized such a probe to heat the cryogenic liquid of Cloared.

As such, the rejection should be withdrawn.

CONCLUSION

Accordingly, it is believed that the present application now stands in condition for allowance. Early notice to this effect is earnestly solicited. Should the examiner believe a telephone call would expedite the prosecution of the application, he/she is invited to call the undersigned attorney at the number listed below.

Applicant has contemporaneously submitted a Request for Reconsideration and a Petition for a Two Month Extension of Time along with the associated fees. Otherwise, it is believed that no other fee is due at this time. If that belief is incorrect, please debit deposit account number 01-1375. Also, the Commissioner is authorized to credit any overpayment to deposit account number 01-1375.

Respectfully submitted,

Date: **March 10, 2009**

/Christopher J. Cronin/

Application No.: 10/552,421
Request for Reconsideration dated March 10, 2009
Response to Office Action dated July 8, 2008

Attorney Docket No. Serie 6110

Christopher J. Cronin
Registration No. 46,513

Air Liquide
2700 Post Oak Blvd., 18th Floor
Houston, Texas 77056
Phone: 302-286-5525
Fax: 713-624-8950